

## Local Rule 46. Attorneys

- (a) An applicant shall file with the clerk of the Court of Appeals, in addition to the material required by F.R.A.P. Rule 46, a certificate in writing on a form approved by the court that the applicant has:
1. argued in either State or Federal appellate courts at least three appeals of a substantive nature. The argument of an appeal in a Moot Court program conducted by a law school recognized by the American Bar Association shall be deemed the equivalent of an argument in an appellate court;
  2. observed the argument of two appeals in this court;
  3. read and is familiar with the Federal Rules of Appellate Procedure (F.R.A.P.) and the local rules of this court; and
  4. in lieu of each one of the three arguments required by (1) supra, argued two motions of substantive nature in which briefs or memoranda of law are submitted in State Courts, Federal Courts or before administrative tribunals.
- (b) With the filing required by F.R.A.P. 46 and "(a)" above, a motion for admission may be made in writing, in which event it will be acted upon by a single judge, or orally at the beginning of any session of the Court without presence of the applicant being required. The movant shall represent that the movant has read the certificate filed in accordance with "(a)" above and that it meets the requirements of this Rule.
- (c) Each applicant upon admission shall pay to the clerk a fee which shall be set by the court, to be held by the court in an appropriate depository and expended upon order of the chief judge for the expenses of the Law Library of the court located in the United States Courthouse, Foley Square, New York City, for out-of-pocket expenses incurred by attorneys or counselors assigned by the court to represent indigent persons not reimbursable under 18 U.S.C. §3006A or other applicable statute, or for other extraordinary purposes approved by the court.
- (d) Counsel of record for all parties must be admitted to practice before this court. Oral argument may be presented only by attorneys admitted to practice before this court. Under exceptional circumstances an attorney may be admitted to argue an appeal pro hac vice. Such admission will be extended as a matter of course to a member of the Bar of a District Court within the circuit who has represented a criminal defendant at trial and appears for that defendant on an appeal taken pursuant to 18 U.S.C. §3006A, or who is acting for any party in an appeal taken in forma pauperis.
1. A notice of appearance must be filed in each case by counsel of record and, if different, by counsel who will argue the appeal, not later than the date of filing the appellant's brief on a form to be provided by the clerk.

2. A corporation may not appear pro se. Papers submitted on behalf of a corporation for whom no counsel has entered an appearance will not be filed.

**(e) Appearance and Argument by Eligible Law Students.**

1. An eligible law student acting under a supervising attorney may appear in this Court on behalf of any indigent person, the United States, or a governmental agency, provided the party on whose behalf the student appears has consented thereto in writing.
2. The supervising attorney shall be a member of the bar of this Court and, with respect to the law student's proposed appearance upon an appeal or other matter before this Court, shall:
  - (i) file with this Court the attorney's written consent to supervise the student;
  - (ii) assume personal professional responsibility for the student's work;
  - (iii) assist the student to the extent necessary;
  - (iv) appear with the student in all proceedings before this Court and be prepared to supplement any written or oral statement made by the student to this Court or opposing counsel.
3. In order to be eligible to appear, the student shall:
  - (i) be enrolled in a law school approved by the American Bar Association. The student shall be deemed to continue to meet this requirement as long as, following graduation, the student is preparing to take the first state bar examination, of the state of the student's choice within this circuit, for which the student is eligible or, having taken that examination, the student is awaiting publication of the results or admission to the bar after passing that examination;
  - (ii) have completed legal studies amounting to at least four semesters, or the equivalent;
  - (iii) be certified, by either the dean or a faculty member of the student's law school designated by the dean, as qualified to provide the legal representation permitted by this rule. This certification may be withdrawn by mailing a notice of withdrawal to the clerk of this court or it may be terminated, by vote of a majority of the panel sitting on a case in which the student is appearing, at any time without notice or hearing and without any showing of cause. The loss of certification by action of this court shall not be considered a reflection on the character or ability of the student. The

dean or a faculty member designated by the student may recertify such a student for appearances before other panels;

- (iv) be introduced to this court by an attorney admitted to practice before this court;
- (v) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the party on whose behalf the student renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services;
- (vi) certify in writing that the student is familiar and will comply with the Code of Professional Responsibility of the American Bar Association;
- (vii) certify in writing that the student is familiar with the Federal Rules of Appellate Procedure, the Rules of this court, and any other federal rules relevant to the appeal in which the student is appearing.

4. Upon filing with the clerk of this court the written consents and certifications required by this rule, an eligible law student supervised in accordance with this rule, may with respect to any appeal or other proceeding for which the student had met the requirements of this rule:

- (i) engage in the drafting or preparation of briefs, appendices, motions, or other documents;
- (ii) appear before this court and participate in oral argument.

**(f) Suspension or Disbarment.** Suspension or disbarment shall be governed by Rule 46, Federal Rules of Appellate Procedure.

1. In all cases in which an order disbaring an attorney or suspending the attorney from practice (whether or not on consent) has been entered in any other court of record, federal or state, and a certified copy thereof has been filed in this court, the clerk shall enter an order for the court, to become effective twenty-four days after the date of service upon the attorney unless sooner modified or stayed, disbaring the attorney or suspending the attorney from practice in this court upon terms and conditions comparable to those set forth by the other court of record. A reasonable effort shall be made to locate the attorney's current address, and, if that effort is unsuccessful, mailing a copy of the order to the last-known address shall be deemed proper service. A copy of the order shall also be mailed to the Committee on Admissions and Grievances of the Court of Appeals to be established under subsection (h) hereof (hereafter "Committee").

2. Within twenty days from the date of service of this court's order, a motion may be filed in this court either by such attorney or the Committee for a modification or revocation of the order of this court. Any such motion shall set forth specifically the facts and principles relied on by applicant as showing cause why a different disposition should be ordered by this court. The timely filing of such a motion will stay the effectiveness of this court's order until further order of this court.
3. A motion to modify or revoke an order that has become effective under (1) will not be entertained unless good cause is shown for failure to file a motion timely under (2).
4. The court in any matter disputed under (2) or (3) may refer the matter to a special master to be appointed by the court for hearing and report.
5. The foregoing paragraphs of this subsection shall apply to any attorney who resigns from the bar of any other court of record, federal or state, while under investigation into allegations of misconduct on the attorney's part. Upon resigning under such conditions the attorney shall promptly inform the clerk of this court of such resignation.

**(g) Attorneys Convicted of Crime.**

1. Upon the filing with the court of a certificate, duly signed by the clerk of the court in which the conviction has occurred, demonstrating that an attorney has been convicted of a serious crime as hereinafter defined, the clerk of this court shall immediately enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere, judgment after trial, or otherwise, and regardless of the pendency of an appeal from the conviction, unless the court orders otherwise. A copy of such order shall be served upon the attorney by mail at the attorney's last known address. Such suspension shall remain in effect pending disposition of a disciplinary proceeding to be commenced upon the filing of the certificate of conviction, unless the court orders otherwise.
2. The term "serious crime" shall include any felony, federal or state, and any lesser crime a necessary element of which, as determined by statutory or common law definition of such crime in the jurisdiction where the conviction has occurred, is (a) interference with the administration of justice; (b) false swearing; (c) misrepresentation; (d) fraud; (e) willful failure to file income tax returns; (f) deceit; (g) bribery; (h) extortion; (i) misappropriation; (j) theft; or (k) an attempt, or conspiracy, or solicitation of another to commit a serious crime.
3. A certificate of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime by such attorney in any disciplinary proceeding instituted against the attorney based upon the conviction.

4. Upon receipt of a certificate of conviction of an attorney for a serious crime and if no order has been entered under subparagraph (f) above, the court may, in addition to suspending the attorney in accordance with the provisions of (1), supra, also direct the institution of a formal presentment against the attorney, without any probable cause hearing, before the Committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. A proceeding under this subparagraph (g)(4) may be terminated if an order is entered under subparagraph (f) above. A disciplinary proceeding so instituted shall not, however, be brought to hearing until all appeals from the conviction are concluded or the time to take such appeal has expired.
5. Upon receipt of a certificate of conviction of an attorney for a crime not constituting a serious crime, other than a traffic offense, the court shall refer the matter to the said Committee for whatever action the Committee may deem warranted. The court may, however, in its discretion, make no such reference with respect to convictions for minor offenses.
6. An attorney suspended under the provisions of (1), shall be reinstated forthwith upon the filing of a clerk's certificate demonstrating that the underlying conviction for a serious crime has been reversed, but the reinstatement will not terminate any proceeding then pending against the attorney, the disposition of which shall be determined by the court or the Committee on the basis of the available evidence.

**(h) Committee on Admissions and Grievances.**

1. Appointment, members. The court shall appoint a standing committee of seven members of the bar to be known as the Committee on Admissions and Grievances. Three of those first appointed shall serve for the term of one year; two for two years; and the remainder and all thereafter appointed shall serve for the term of three years. Each member shall serve until a member's successor has been appointed. If a member shall hold over after the expiration of the term for which a member was appointed, the period of the member's hold-over shall be treated as part of the term of the member's successor. The court may vacate any such appointment at any time. In the case of any vacancy caused by death, resignation, or otherwise, any successor appointed shall serve the unexpired term of the successor's predecessor. The court shall designate one of the members to serve as chairman whenever it may for any reason be necessary. Four members of the Committee shall constitute a quorum. The court shall appoint a member of the bar as secretary of the Committee, who shall not be entitled to vote on its proceedings.
2. Reference on matters of misconduct. The court may refer to the Committee any accusation or evidence of misconduct in respect to any professional matter before this court that allegedly violates the rules of professional conduct or responsibility

in effect in the state or other jurisdiction where the attorney maintains his or her principal office for such investigation, hearing and report as the court deems advisable. Such matters thus referred may include not only acts of affirmative misconduct but negligent conduct of counsel. The Committee may, in its discretion, refer such matters to an appropriate bar association for preliminary investigation.

3. Committee action. In any matter referred to the Committee under the provisions of these Rules it shall provide the attorney with a statement in writing of the charges against him and it shall hold a hearing, on at least ten days' notice to the attorney, making a record of its proceedings; in the event the attorney does not appear, the Committee may take summary action and shall report its recommendation forthwith to the court; in the event that the attorney does appear, the attorney shall be entitled to be represented by counsel, to present witnesses and other evidence on the attorney's behalf, and to confront and cross-examine under oath any witnesses against the attorney. Except as otherwise ordered by the court the Committee shall in its discretion make and be governed by its own rules of procedure.
4. Committee recommendation. The Committee shall file the record of its proceedings, its recommendation and a brief statement of the reasons therefor with the Clerk who shall retain them in camera after furnishing the court with copies thereof, and the Clerk shall mail a copy of the Committee's recommendation and statement of its reasons to the affected attorney and make the record of the Committee's proceedings available to the attorney. Within twenty days after filing of the record, report and recommendation the attorney may file with the Clerk a statement, not to exceed ten typewritten pages in length, in opposition to or mitigation of the Committee's recommendation. The court, consisting of the active judges thereof, shall act within a reasonable time thereafter by majority vote.
5. Committee expense. The Committee may be reimbursed for its reasonable expenses in the discretion of the court from such sources as may be available to the court for such purposes.

(Effective April 26, 1996.)